

### ARGUMENTS/REMARKS

Applicant would like to thank the examiner for the careful consideration given the present application. The application has been carefully reviewed in light of the Office action, and these remarks are provided in response.

Claims 1, 6, 13-21, and 24 remain in this application. Claims 2-5, 7-12, and 23 were previously canceled.

#### **Rejections Under 35 U.S.C. §102(b)**

Claims 1, 6, 22, and 24 were rejected under 35 U.S.C. §103(a) as being unpatentable over Abdoh (U.S. 6,564,207) in view of Peters *et al.* (U.S. 5,893,098), and in further view of Ainslie *et al.* (U.S. 6,480,599). Claims 13-21 were rejected as above in further view of Mitchel *et al.* (U.S. 5,164,981), whereas claims 13-21 were rejected in still further view of Mitchell *et al.* (U.S. 5,164,981). For the following reasons, the rejections are respectfully traversed.

Claim 1 recites a system of collecting survey information comprising:

an interactive voice recognition unit for providing  
said questions to the survey participant in a  
*verbal* manner, wherein

said interactive voice recognition unit also receives  
the responses to said questions in a *verbal*  
manner...[and] wherein

said system includes a voice recorder for digitally  
recording said verbatim answer given by the  
survey participant for audio playback to the  
user.

(emphasis added). The Examiner admits that neither Abdoh nor Peters suggest such a limitation, and instead newly cites Ainslie for such a teaching. However, a close reading of the reference does not support the Examiner's interpretation, where col. 7, lines 29-45 of Ainslie are cited for teaching playback of a recorded response to the user. However, this conclusion is erroneous for at least two reasons.

First, nowhere does Ainslie specifically state that any response of a caller is actually *recorded*. The cited section states that the “interactive voice response means may then playback the response at 232 for verification, and if the caller’s response verifies the identification number when captured and analyzed at 234 it is then saved at 234 in the customer database for future use.” Reading the previous material, it is clear that what Ainslie is describing is that the IVR analyzes the response of the user, and then plays back the *analyzed* response to verify that it is accurate. For example, if the caller recites an account number, the system recites the account number as it is interpreted by the system (in the “system” voice), back to the user, in order to verify that the interpreted number is correct. It would make no sense to merely play back a recording of the callers recitation of the account number, because then nothing is being verified. Instead, the system intends to verify that its *interpretation* of the callers number is accurate. This is analogous to one person repeating the phone number provided by another person to ensure that the number written down is accurate. Nowhere does the reference actually state that the information played back to the caller is a recording of the caller’s information, and in fact, such a feature would be meaningless for the reasons discussed above, and thus the claim is patentable over the reference for this reason.

Claim 15 recites the feature of “automatically recording a verbal answer of the survey participant to said at least one verbatim question and storing said recording in said database, wherein said recording is a literal recording of the participant’s spoken answer”, and also recites generating a survey report including the recording. As discussed above, the Ainslie reference fails to teach such a recording and also fails to teach generating any reports including verbal recordings, and thus claim 15 is patentable over the references as well. Claim 24 also recites generating a report including a verbatim recording, and thus is also patentable over the references.

Second, the claim specifically recites that the recorded verbatim is played back to a “user”, whereas the actual recording is of the “survey participant”. The teaching as interpreted by the Examiner is that the *caller* listens to his own recording. But even if true (and applicant disputes that by the discussion above), that is not what the claim recites (i.e., there is no “user” and “participant” in the cited teaching), and thus the claim is patentable over the reference for this reason as well.

Furthermore, claim 1 recites that the “verbatim question” is provided to the survey participant “when a response to a previous question meets a specified criterion but no verbatim question is provided if the response does not meet the specified criterion”. Claim 15 recites similar limitations. Claim 24 recites the limitation of “presenting of said at least one verbatim question [for storing in a database] occurring only if the response to a previous question is not within a predetermined acceptable response range”. Ainslie fails to teach that a verbatim question is provided dependent upon a previous response of the caller. Accordingly, these claims are patentable over the references for this reason as well.

Claim 6 recites a method of collecting and managing survey data comprising the step of “initiating a process of establishing communication with a survey participant, wherein said survey participant is randomly selected from a pool of potential participants who had been provided a product or service within 72 hours of said initiating” and the step of “automatically compiling and presenting a survey report to a user within 24 hours of said initiating, said survey report utilizing the answers collected from said survey participant for said report”. Claim 24 recites similar limitations.

The Examiner fails to provide any reference that teaches such speedy compiling of survey data, instead taking “official notice” that it would have been obvious to collect data within a specified time, because Abdoh is concerned with faster data collection, and because such a timeframe (as recited in the claim) would allow more accurate data collection.

First, applicant disputes this assertion that such features are well known, or even within the skill of the art at the time the application was filed. Taking “official notice” requires that facts outside of the record be capable of *instant* and *unquestionable* demonstration as being ‘well-known’ in the art (see MPEP §2144.03). However, the Examiner has likely attempted, but failed, to find a reference which teaches the cited elements of the claims specifying the time periods. Hence, these elements are not likely to be “notoriously well known” as required to take official notice (*id.*). Accordingly, applicant hereby traverses the official notice and formally requests, as required by the MPEP (*id.*), that the Examiner locate a reference in support of her position that it would be known, and within the skill of the art, to conduct a survey using the specified time

periods. Consequently, applicant asserts that the Examiner's rejections based on the Official notice that is herein traversed, and therefore should be withdrawn absent the Examiner finding a reference supporting the notoriously "well known" nature of the claimed feature.

Second, the Examiner's assertion of obviousness clearly relies on improper hindsight. The Examiner assumes the claimed features, and merely comes up with benefits that such features would provide. The benefits are not in dispute; what is in dispute is that such capabilities existed in the prior art, which the Examiner has not shown. Thus, the claimed features are patentable over the references absent a showing that they were known, or a showing, based on more than mere conjecture, that such features were obvious to, and within the capability of, one skilled in the art.

Accordingly, claims 6 and 24 are patentable over the references for at least the reasons discussed above. The remaining claims depend on one of the above discussed claims, and thus are patentable over the references for at least the same reasons as their parent claim.

Furthermore, applicant disputes that the Ainslie reference is even relevant to the subject of survey collection and presentation. Ainslie is a reference whose subject matter is the correct routing of telephone calls in a telecommunication network, especially among a plurality of service providers. The subject matter of Ainslie is not at all analogous to the subject matter of the invention. See MPEP §2141.01(a). The similarities and differences in structure and function of the inventions carry great weight in determining if art is analogous. See *In re Ellis*, 476 F.2d 1370, 1372, 177 USPQ 526, 527 (CCPA 1973). The functions of the Ainslie system are quite different than the invention. Ainslie is merely concerned with the proper routing of telephone calls so that the caller reaches the proper customer support department in order to get the caller needed information, support and help. In contrast, the function of the invention is a different field of endeavor, one involved with actually collecting data from a caller in order to compile reports for a *third party*, in order for the third party to perform quality control. There is no intent to provide customer support functions to the caller, as the data is directed at the third party consumers of the survey reports. Accordingly, the Ainslie

reference is not reasonably pertinent to the problem with which the inventor is concerned because a person having ordinary skill in the art of survey collection and compilation would not reasonably have expected to solve that problem by considering a reference dealing with customer service call routing. See *In re Clay*, 966 F.2d 656, 23 USPQ2d 1058 (Fed. Cir. 1992). Thus, Ainslie is not relevant to the invention, and is not proper prior art, and thus the rejections utilizing that reference should be withdrawn.

Finally, regarding claim 13, the claim recites that:

said system monitors said answers of the participant and switches to a manual survey mode if the participant requests a transfer to said manual survey mode or said system switches to said manual survey mode in response to an evaluation of one or more of said answers of the participant or in response to a lack of an expected answer of the participant, and wherein said server serves the same questions to the agent that said server would automatically present to the participant so that the agent can present said same questions to the participant...

The Examiner asserts that Mitchel teaches the “transfer from a voice response system to an operator terminal based on decisional criteria wherein the voice response unit transfers the transaction history of what has thus far occurred to the operator terminal (column 3, lines 15-34)”. But even if true, there is no suggestion, and the Examiner does not assert, that any server serves the same questions to an agent for manual presentment that the automated server was serving to the participant. Merely providing a “transaction history” is not enough, as the claim clearly requires that the agent receive the actual survey questions. Accordingly, claim 13 is patentable over the references for this reason as well, as are other claims with similar limitations.

In consideration of the foregoing analysis, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 16-0820, our Order No. QUAL 32668.

Respectfully submitted,  
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October 14, 2008